

*Mexico***Brownstein Hyatt
Farber Schreck**

Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, D.C. 20005-3355
T 202.296.7353 F 202.296.7009

Fax Cover Sheet**DATE:** October 23, 2009

	PHONE NO.	FAX NO.
TO: FARA Registration Unit		202-514-2836
FROM: William Moschella		
RE: Information Materials distributed by Brownstein Hyatt Farber Schreck, LLP (#5870) on behalf of the Embassy of Mexico		

No. of Pages With Cover Page: 4

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Message:

Attention. FARA Registration Unit

Please find attached 3 pages of Information Materials distributed by BHFS, LLP (#5870) on behalf of the Embassy of Mexico. If you do not receive six pages of information and the cover sheet please call Theodosia Sorto at 202-652-2340

Thank you,

William E. Moschella

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October 22, 2009

The Honorable John Conyers
Chairman
Committee on the Judiciary
2125 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Howard Berman
Chairman
Committee on Foreign Affairs
2170 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
2322A Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable Ileana Ros-Lehtinen
Ranking Member
Committee on Foreign Affairs
B360 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Conyers, Chairman Berman, Ranking Member Smith and Ranking Member Ros-Lehtinen:

United States citizens arrested abroad are guaranteed timely notice of their rights to communicate with a U.S. consular official by Article 36 of the Vienna Convention on Consular Relations (VCCR), a treaty the U.S. ratified without reservation in 1969. These rights help provide legal fairness in a foreign land and are critical to the safety and security of Americans who travel, live and work in other countries around the world: missionaries, Peace Corps volunteers, tourists, business travelers, foreign exchange students, members of the military, U.S. diplomats, and countless others. U.S. consular officials assist detained U.S. nationals in their efforts to navigate an unfamiliar legal system, bridge cultural or language barriers that may exist between the U.S. national and the foreign detaining authority, arrange or recommend competent local legal representation, and coordinate communications to friends and family back in the States.

Americans rely on these rights every day, and the U.S. government routinely insists that other governments provide consular access consistent with their treaty obligations. For example, in 2001 when a U.S. Navy spy plane made an emergency landing in Chinese territory after colliding with a Chinese jet, the State Department cited the Vienna Convention in demanding consular visits to the plane's crew. Chinese authorities granted consular visits to the crew members, who were detained in China for 11 days. Throughout the tense standoff, State Department officials repeatedly cited the Convention as the basis for immediate and unobstructed access to the American citizens.

Our ability to insist that other countries provide U.S. nationals with Article 36 consular access is strengthened by our good faith efforts to do the same for arrested foreign nationals. Problematically, the U.S. has failed to comply with the International Court of Justice's (ICJ) determination that the United States must provide judicial review and reconsideration of the cases of certain Mexican nationals who did not receive their rights under Article 36 of the VCCR.

See *Case Concerning Avena and Other Mexican Nationals*, 2004 I.C.J. 128 (March 31). It is imperative that we comply with the ICJ's decision so that we may ensure that American citizens detained abroad may also receive their VCCR rights.

The United States and 171 other countries are parties to the VCCR. Like all treaties, the VCCR is binding federal law. Simply put, Article 36 ensures the rights of foreign nationals to have access to consular assistance without delay and of consulates to assist their citizens abroad. In addition to ratifying the VCCR, the U.S. also ratified the VCCR Optional Protocol, thereby designating the ICJ as the court with jurisdiction to resolve disputes regarding the VCCR.

President Bush, understanding the implications that noncompliance with the ICJ's decision would have for our own citizens and for our relationship with Mexico, attempted to enforce the *Avena* decision through a determination that "the United States will discharge its international obligations . . . by having state courts give effect to the [ICJ's] decision . . ." (Memorandum from President Bush to the Attorney General, 28 February 2005). However, the U.S. Supreme Court decided that the President did not have the authority to enforce ICJ decisions. The Court held that the "responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress," *Medellin v. Texas*, 552 U.S. ____ (2008).

It is imperative that Congress enact legislation implementing the *Avena* judgment so that other governments do not invoke our non-compliance as justification for ignoring their obligations under the same treaty. Make no mistake; I hold no candle for Mexican nationals who have been convicted of heinous crimes and believe that justice should be swiftly served. That justice, however, must be served in compliance with law, including our unambiguous international agreements. The rule of law dictates that we abide by our undisputed treaty obligations, and I firmly believe doing so will help protect the American abroad detained by foreign authorities.

The minor inconvenience of providing federal judicial review of the remaining *Avena* cases pales in comparison to the threat to the security of American citizens abroad and the potential damage to our standing as a world leader that would result if the United States breaks its promise to provide consular notification and access. I appreciate your attention to this important issue and wish you the best.

Sincerely,



Lee H. Hamilton

cc: The Honorable Hillary Clinton,
Secretary of State
The Honorable Eric Holder

Attorney General
The Honorable John Kerry, Chairman
Senate Committee on Foreign Relations
The Honorable Richard Lugar, Ranking Member
Senate Committee on Foreign Relations
The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary